FOR ARGUMENT

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-602

DONALD W. AGINS and BONNIE G. AGINS,
Appellants,

vs.

CITY OF TIBURON,
Appellee.

Amicus Curiae Brief of the States of Colorado, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, New York, Ohio, Oregon, Vermont, Washington and Wisconsin.

Appeal from the Supreme Court of California

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INTRODUCTION

Pursuant to Rule 42(4) of this Honorable Court, the States of Colorado, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, New York,

Ohio, Oregon, Vermont, Washington and Wisconsin hereby submit this amicus curiae brief in support of the City of Tiburon.

INTEREST OF THE AMICI STATES

The ordinances of the City of Tiburon permit the construction of up to five residences on the appellants' five acre parcel of property; the ordinances specify that the appellants may construct one residence as a matter of right. The California Supreme Court opinion, *Agins v. City of Tiburon,* 24 Cal. 3d 266 (1979), holds that these ordinances, on their face, do not constitute a taking of property. The Court further indicated, moreover, that the appropriate remedy for an ordinance which "takes" property is invalidation of the ordinance, rather than an award of damages.

The cities and counties of each of these amici administer various zoning and land use measures. Some of the cities and counties of these amici have adopted ordinances designed to control their rates of growth and to ensure the adequate provision of municipal services. See, e.g., Einsweiler, Gleeson, Ball et al., Comparative Descriptions of Selected Municipal Growth Guidance Systems. A Preliminary Report, in 2 Management and Control of Growth 283 (R. Scott ed. 1975). In response to the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.), many of these amici, like California, have enacted comprehensive coastal zone management laws. See, e.g., Wash. Rev. Code Ann. §§ 90.58.010 et seq. Some of the amici have also enacted legislation designed to protect the resources of the wetlands of their states. See, e. g., *Just v. Marinette County,* 201 N. W. 2d 701 (Wis. 1972); *Department of Natural Resources v. Lynchester Sand and Gravel Corp.,* 334 A. 2d 514 (Md. 1975); *Hayes v. Yount,* 552 P. 2d 1038 (Wash. 1976); *Lovequist v. Conservation Commission,* 393 N. E. 2d 858 (Mass. 1979).

All of these measures may adversely affect the value of privately held property. For that reason, the decision of this Court will extend far beyond the immediate impact on the City of Tiburon's zoning ordinances. Indeed, each of these amici emphatically join with California in asserting that adoption of the appellants' position would paralyze each and every one of these regulatory measures, and would inhibit the adoption of any significant regulatory measures in the future.

CONCLUSION

Each of these amici has reviewed the amicus curiae brief submitted by the State of California. Each respectfully joins in California's contention that invalidation, rather than monetary damages, is the appropriate remedy for a constitutionally impermissible regulatory action, and therefore urges that the judgment of the California Supreme Court be affirmed.

March, 1980.

Respectfully submitted,

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